ಶ್ರೀ ಎಸ್.ಎಸ್. ಪಾಟೀಲ್: ಮಾನ್ಯ ಉದಾಸಿಯವರೆ, ನಾನು ಈ BPL List ಹೇಗೆ ಇದೆಯೆಂಬುದಕ್ಕೆ ಒಂದು ಉದಾಹರಣೆಯನ್ನು ಹೇಳುತ್ತೇನೆ. ನಾನು ಒಂದು ಊರಿಗೆ ಹೋದೆ.

ಉಪಾಧ್ಯಕ್ಷರು: ಈಗ ರಾಜ್ಯಪಾಲರಿಂದ ಬಂದಿರುವ ಒಂದು message dated 19th July 2007 ಇದೆ. ಅದನ್ನು ಸಭೆಯ ಗಮನಕ್ಕೆ ತರುತ್ತೇನೆ.

5. ರಾಜ್ಯಪಾಲರಿಂದ ಬಂದ ಸಂದೇಶ ಕರ್ನಾಟಕ ಪಂಚಾಯತ್ ರಾಜ್ (ತಿದ್ದುಪಡಿ) ಮಸೂದೆ 2007ನ್ನು ಮರುಪರಿಶೀಲನೆಗಾಗಿ ಹಿಂತಿರುಗಿಸುವ ಬಗ್ಗೆ.

MESSAGE

Message under Article 200 of the Constitution of India to the Karnataka Legislative Assembly and the Karnataka Legislative Council in respect of The Karnataka Panchayat Raj (Amendment) Bill, 2007. (L.A. Bill No.29 of 2007)

Greetings, Hon. Members.

After going through The Karnataka Panchayat Raj (Amendment) Bill, 2007, I believe that there are important points and relevant issues which merit attention and serious consideration by Hon. Members and hence I am constrained to bring them to your kind notice. The relevant provisions of the Bill read as follows:

"2. Amendment of Section 3:- In the Karnataka Panchayat Raj Act, 1993 (Karnataka Act 14 of 1993) (hereinafter referred to as the principal Act), in Section3, in sub-section (3), after clause (b), the following provisos shall be inserted, namely:-

"Provided that in the case of any housing scheme or programme funded by the Government and entrusted to the Gram Panchayat, Taluk Panchayat or the Zilla Panchayat, for implementation any committee or authority of Government constituted in this behalf by notification, may be empowered to select the beneficiaries of such housing scheme or programme from among the eligible persons identified by the concerned Gram Panchayat:

Provided further that where the Gram Panchayat fails to identify eligible persons for a housing scheme or programme as required by the guidelines of the scheme, the Government may authorize any officer or authority to be constituted under the Chairmanship of the Member, Legislative Assembly of the constituency to make such identification in accordance with the guidelines of the scheme".

3. Amendment of Section 3A:- In section 3A of the Principal Act in

sub-section (3), after clause (c), the following provisos shall be inserted namely:-

"Provided that in the case of any housing scheme or programme funded by the Government and entrusted to the Gram Panchayat, Taluk Panchayat or the Zilla Panchayat, for implementation, any committee or authority of the Government constituted in this behalf by notification, may be empowered to select the beneficiaries of such housing scheme or programme from among the eligible persons identified by the concerned Gram Panchayat:

Provided further that where the Gram Panchayat fails to identify eligible persons for a housing scheme or programme as required by the guidelines of the scheme, the Government may authorize any officer or authority to be constituted under the Chairmanship of the Member, Legislative Assembly of the constituency to make such identification in accordance with the guidelines of the scheme"

I have received several petitions and representations criticizing and opposing the aforesaid amendments from citizens, Panchayat, NGOs and concerned intellectuals urging that any move that obviously leads to curtailing the powers of the Panchayat is retrogressive and runs counter to the tends towards the historical process of democratic decentralization. A number of their representatives and spokespersons also met me to explain their objections. Quite a few Hon. Members of the State Legislature also met me and registered their opposition to the Bill. The State Panchayat Minister also met me on June 1, 2007 along with the Secretary of Department concerned and the Secretary, Department of Parliamentary Affairs to explain the purpose of the amending articles. After detailed discussion, I was assured that a note again would be submitted to me putting forth the justification for the amendment that it has only a limited object. The note after sometime was received and I went throuth it with necessary care. According to the note furnished:

"The scope of the proposed amendments to sections 3 and 3A is limited to the identification and selection of beneficiaries for schemes or programmes relating to housing only. The amendments will no way affect the identification and selection of beneficiaries by the Grama Panchayaths in respect of other poverty alleviation or development programmes of Government".

As the Hon. Members are aware, the movement towards Panchayat Raj can be traced back in recent times to Mahatma Gandhi's concept of Gram Swaraj. After a long history of debate and development it found ultimate enshrinement in our Constitution through the 73rd Constitution Amendment enacted with almost near unanimity by Parliament in 1992 and embodied as Part IX in the Constitution.

It may be worthwhile to recall the Statement of Objects and Reasons that accompanied the aforesaid Constitution Amendment Bill in order to appreciate in right perspective the scope, perspective and purpose of the 73rd and 74th amendments.

> "Article 40 of the Constitution which enshrines one of the Directive Principles of State Policy lays down that the State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units self-government. In the light of the experience in the last forty years and in view of the shortcomings, which have been observed, it is considered that there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayat Raj Institutions to impart certainity, continuity and strength to them."

This provides constitutional validity to the long cherished dream of participatory local democracy. It may also be brought to the notice of the Hon. Members that even in the Constituent Assembly, Shri K. Santanam described Article 40 as " a definite and unequivocal direction" to the State. The likely impact and approach of the amendment made by the Karnataka Panchayat Raj (Amendment) Bill, 2007, also require to be properly studied in the broad historical context and constitutional perspective.

The State of Karnataka has been hailed as a pioneer in Panchayat Raj reforms and in the implementation of decentralized governance as enshrined in the Constitution. Many other States have largely followed Karnataka's example and have established decentralized local bodies based on the Karnataka model. As the Hon. Members are aware, in 2001, the then Minister for Rural Development and Panchayat Raj constituted a Working Group under the Chairmanship of a senior officer, the Development Commissioner, to make recommendations on Panchayat Raj reform. The Working Group recommended several measures for strengthening Gram Sabhas, including changes in the law to provide for Ward Sabhas below Gram Sabhas at the neighbourhood level and elaborate processes for beneficiary selection by Ward and Gram Sabhas under government programmes. Amendments based on these recommendations were intensely debated both inside the legislature and outside by intellectuals and Ward Groups. In 2003, while presenting the draft Amendment Bill, the then Hon. Minister suggested they be referred to a Select Committee. After a thorough scrutiny by the Joint Select Committee, the Bill met unanimous approval of both the Houses of the Legislature in September 2003. Hence, the existing arrangement is a product of very thorough work, dicerning scrutiny and the combined wisdom of the legislature, keeping in mind the principle of transfer of power to people and trying to make a substantial contribution towards decentralization and grassroots democracy. The rationale of the role of the Gram Panchayats and, more so, the Gram Sabhas in beneficiary schemes, was be-

cause of their proximity to each and every inhabitant of a Gram (village). As such they are in a more advantageous and realistic position to identify the deserving beneficiaries for all schemes including housing. The law as it exists at present is unamiguous and is in keeping with the spirit of the 73rd amendment.

Hon. Members, it will seem that the "Statement of Objects and Reasons" in the present The Karnataka Panchayat Raj (Amendment) Bill, 2007, does not make out adequate justification necessitating the proposed changes except the bald assertion: "The Gram Panchayats are required to select beneficiaries for various schemes through Ward Sabhas and Gram Sabhas. The Gram Panchayats have not been functioning effectively which has affected the implementation of these programmes. Hence, ti is considered necessary to make a provision for constitution of Ashraya Committees to select the beneficiaries." It is not known or what basis such a conclusion has been arrived at. No committee, official or otherwise, was appointed to make a thorough study to come to such a drastic conclusion, when we in the State of Karnataka rightly take pride about the working of our Gram Panchayats and Panchayat Raj in general. Commendation and appreciation have been received from different quarters by the system. It is not known if the situation was any better in respect of housing programmes before the amendment was made in 2003 unanimously. Moreover, it is not known as to how and why the Gram Sabhas and Gram Panchayats have not been able to discharge their duties satisfactorily, if it is really so. Was any objective and independent study made as to the possible difficulties, programmatic, administrative financial or infrastructural, that might have been faced by these local bodies? Was anything done to remedy them? Nothing definite is known. Was any consultation with the concerned bodies held at any level or at any time on the issue to enable the members of these local bodies or NGOs, experts and others to give their view points? No authentic material seems to be available for scrutiny in this regard, which could provide justification to changes in present system that was instituted through the Karnataka Panchayat Raj Act, 2003. The sweeping indictment of these local bodies in these circumstances, the Hon'ble Members will agree, does not carry conviction. Amendment in the existing statute on the basis of sundry observations or personal impressions will not be fair to the Panchayats which form the bedrock of the democratic system in which the higher political representatives are also expected by the people to provide motivation, guidance and support to the grassroots local democratic bodies for them to achieve their objectives effectively.

Hon'ble Members, I have to bring to your kind notice that, while going through the present Karnataka Panchayat Raj (Amendment) Bill 2007, it evidently seems to undermine the Constitutional mechanism for rural develop-

ment governance as enshrined in Part IX of the Constitution of India and the Karnataka Panchayat Raj Act, 1993 which are intended to implement the 73rd amendment with the twin objectives of broader democratic representation (Articles 243C-243F) and direct empowerement through conferment of decision making powers to Panchayats. The 73rd amendment does not envisage that parallel institutions be invented to discharge functions even in the guise of a default power, where and when duties are alleged to be not discharged effectively by Panchayats. The correct approach must be to devise ways and means to enable the panchayats to function effectively, rather than to bring in higher legislators/officials into the system. It will obviously be considered as regressive step in the march towards strengthening local democracy and striking at the root of the 73rd amendment. It may not be out of order also to mention that the reinstatement of legislators and officials in the set up in this manner and vesting them with authority on the pleat that Gram Sabhas and Gram Panchayats have not worked satisfactorily may even be misconstrued as conflict of interests between the former and panchayats.

The existing law, The Karnataka Panchayat Raj Act, 1993, is quite clear as regards the process and authority for the selection of beneficiaries. However, the proposed amendments and insertion of proviso to Section 3(3)(b) and 3(A)3(C) state that, if the Gram Panchayat fails to discharge its duties in respect of Housing Schemes or programmes funded by the government, then a committee headed by a Member of the Legislative Assembly of the constituency shall select the beneficiaries from the list prepared by the Gram Panchayat. This obviously gives overriding authority to the legislator and he becomes the final arbiter. this is seemingly a very open-ended provisons. Questions arise as to who will decide that the panchayat has failed to discharge its duties and who will constitute the committee. Why select simply housing schemes when according to the "Statement of Objections and Reasons" of the Karnataka Panchayat Raj (Amendment) Bill, 2007, Panchayats have not been fucntioning effectively and these programmes are affected? What about other poverty alleviation and social justice schemes? Is not rural housing a social justice and poverty alleviation programme? This kind of approach can be with ease extended, it is apprehended, to other programmes funded by the government and thus defeat the very purpose of the 73rd amendment.

As is reported, the State is implementing three housing schemes, viz., Indira Awas Yojana substantially funded by the Central Government, Dr. Ambedkar housing Scheme for Scheduled Castes and Scheduled Tribes funded by the State Government, and Ashraya Housing Scheme also funded partly by the State Government and partly through Institutional Fiance and also subsidy. Are the proposed amendments intended to cover all the three schemes or

do they exclude Indira Awas Yojana which has its own guidelines issued by the Government of india, and specifically require that the beneficiaries shall be selected by the Gram Panchyats through the Gram Sabhas? Is it not invidious and discriminatory as all funds are primarily public funds? If the two schemes initiated by the State are to be improved, how will the Indira Awas Yojana be put on a better footing, in view of the assumption underlying The Karnataka Panchayat Raj (Amendment) Bill, 2007, that housing programmes in Karnataka are not being implemented properly by Panchayats?

The taking away or depriving of powers to panchyats and Gram Sabhas signifies a major reversal and retreat of Panchayat Raj and seems to violate the spirit of Panchayat Raj as enshrined in the Constitution.

Moreover, the taking away of powers specifically in respect of housing schemes or programmes seem to contravene Article 14 of the Constitution.

It may be pointed out that in 2002, a Standing Committee of Parliament (with MPs across parties and from both Lok Sabha and Rajya Sabha) while reviewing the progress of implementation of the 73rd Amendment relating to Panchayats, quoted in its 37th Report the Hon. Supreme Court having held in a judgment, "Any legislative device of the government which comes into direct conflict with the mandatory provisions of Article 243E of the Constitution, such device has to be declared as ultra vires of the said provision of the Constitution" . The same ought to hold good if there is a departure from Article 243G of the Constitution. This Article constitutes the essence, the ethos and the very soul of Panchayat Raj. Article 243G uses the operational words "endow" and "devolution" with respect to powers given to Panchayats. Broadly, the scope of these words would cover the transfer of power over funds, power over functions and power over functionaries. It is intended to enable Panchayats to serve better as units of local self-government, and not disable them.

While Article 243G gives the power to States to determine the scope and ambit of Panchayat Raj, this ought not to be interpreted as authority to include or initiate the reversal of Panchayat Raj. It is not meant to curtail and circumscribe Panchayat Raj but to give it the requisite momentum. It will be unfortunate and stretching it too far if recourse to this Article is taken to justify the virtual withdrawal and deprivation of powers endowed earlier on Panchayats as it does not conform to the entire spirit of the 73rd Constitution Amendment.

The Pahcnayat Raj system rests on the faith, like democracy itself, that it is a self-correcting mechanism with civil society pressure, increasing people's awakening and public participation as the ultimate and effective democratic means of ensuring both transparency and accountability of local

government institutions. The entire Part IX dealing with the Panchayats is a well-conceived, well-knit and well-structured creative exercise aimed at the strengthening, broadening and deepening of the democratic system of Panchayats and has to be viewed as such.

It may be pertinent to quote in this context only a brief extract from the impassioned speech of the then Prime Minister Rajiv Gandhi in Parliament in 1989 while introducing the 73rd Amendment. While referring to his tour to hundreds of villages and discussions with countless people in the country, he said:

> "We learnt that a grassroot administration without political authority was like a mean without salt. We learnt that however well-intentioned our district bureaucracy might be, without effective elected authority the gap between the people and the bureaucracy could not be closed. We learnt that the vacuum created by the absence of local level political authority had spawned the power brokers who occupy the gap between the people and their representatives in distant Vidhan Sabhas and the ever more remote Parliament. We learnt that corruption could only be ended by giving power to the panchayats and making panchayats responsible to the people. We learnt that inefficiency could only be ended by entrusting the people at the grassroot level with the responsibility for their own development. **We learnt that callousness could only be ended by empowering the people to send their own representatives to institutions of local self-government."**

The Karnataka Panchayat Raj (Amendment) Bill, 2007, Hon'ble Members, is not obviously consistent with this forward looking democratic approach.

While expressing and affirming highest regards for the Hon'ble Members of the State Legislature; I, T.N. Chaturvedi, Governor of Karnataka, in exercise of the power conferred under Article 200 of the Constitution of India, hereby return. The Karnataka Panchayat Raj (Amendment) Bill, 2007, with the request to hon'ble legislators for reconsideration in their wisdom about its need, propriety, timeliness and relevance, keeping in view the aforesaid explanatory observations, serious wideranging implications, the consititutional mandate and the likely longterm impact the amendments may have on the future of Panchayat Raj in our State of Karnataka.